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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-66
85 Sampson Road, Charlton, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2, relative to a determination of the Charlton Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building operated by Heritage Country Club, and owned by William Plante (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 85 Sampson Road, Charlton, Massachusetts.

B) Procedural History

By written notice dated May 16, 2005, the Charlton Fire Department issued an Order of Notice to the Appellant informing him about the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 85 Sampson Road, Charlton, Ma. The appellant filed an appeal of said order on June 30, 2005. The Board held a hearing relative to this appeal on January 11, 2006, at the Department of Fire Services, Stow, Massachusetts.

The Appellant, William Plante, appeared on his own behalf. Chief Ralph W. Harris, Sr., appeared on behalf of the Charlton Fire Department, and Curtis J. Meskus, Commissioner, appeared on behalf of the Charlton Building Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, State Fire Marshal Stephen D. Coan, Chief Thomas Coulombe, Alexander MacLeod, and Peter E. Gibbons. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse, or modify the enforcement action of the Charlton Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G 1/2?

D) Evidence Received

1. Application for Appeal by Appellant
2. Written Statement in Support of Appeal
3. Order of Charlton Fire Department
4. Notice of hearing to Appellant
5. Notice of hearing to Charlton Fire Department
6. (A-E) Appellant's Document submittal in further support of Appeal
7. (A-B) Photographs

E) Subsidiary Findings of Fact

- 1) By Notice dated May 16, 2005, the Charlton Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 85 Sampson Road, Charlton, in accordance with the provisions of M.G.L. c. 148, s.26G. This building is owned and operated by Heritage Country Club, a private, for profit establishment.
- 2) The subject building, described by the Appellant as a "golf clubhouse" is located on an 18-hole golf course. According to the building's Certificate of Inspection, dated November 22, 2005, the two-story building is characterized as a "Restaurant/Club House" with a use group classification of "A-3". The Building has a total capacity of 335 persons: 280 persons in the first floor function and bar area, 30 persons in the pro Shop, and 10 persons each for the men's and ladies locker rooms. The function/lounge area consists of approximately 2,000 s.f. Based upon an allowable capacity of 280 persons for this area the occupant density is approximately 7.15 s.f. per person.
- 3) The function/bar area consists of a large, free flowing area that features a substantial horseshoe shaped, fully stocked bar, surrounded by over 20 lounge chairs featuring a "big screen" television. The floor area is covered with wall-to-wall carpeting. The lounge has a large stone fireplace and wooden beamed ceiling area. According to the Appellant's testimony, the establishment has neither a dance floor nor does it provide live or recorded music for dancing or viewing purposes and has never featured any other musical, theatrical, or comedy presentations. The club does not hold an entertainment license. The bar/function portion of the building is not currently used or rented out for weddings, parties or similar events that feature live entertainment, music or dancing. It is often used to host golf tournament banquets that feature meals and alcoholic beverages. The

clubhouse offers golf outing daily specials that include a round of golf, golf cart, and a meal for a reduced fee.

- 4) According to the Appellant, the facility holds a full liquor license, which allows it to serve all types of liquors until 1:00 a.m. According to testimony, the establishment generates approximately \$200,000.00 of revenue from food and approximately \$150,000.00 of revenue from bar sales.
- 5) The appellant testified that the country club operates on a seasonal basis from April to October of each year. The Appellant testified that the facility serves food continuously during hours of operation. The facility opens at approximately 8 a.m. and on average closes at around 9:00 p.m. However, the establishment can legally serve liquor until 1:00a.m. Persons can sit down and eat or just have a drink or both. The atmosphere is typical of a lounge type facility. A photograph of the front of the building depicts a sign on the front door that promotes *Budweiser* beer.
- 6) The fire department representative indicated that the Order to install sprinklers was based upon the overall building capacity and the existence of a liquor license and bar/lounge-type accommodations. The representative of the fire department did not contest the factual characteristics of the building, including its use and description.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from

nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, the following factors:

- a) No theatrical stage accessories other than raised platform;
- b) Low lighting levels;
- c) Entertainment by a live band or recorded music generating above-normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) The subject building has been classified as a place of assembly with a capacity of 100 persons or more.
- 5) This building, as currently used, is neither classified as an “A-2” establishment nor does it currently have the characteristics typical of a nightclub or dance hall as described above.
- 6) However, this establishment, as currently used and designed, clearly features characteristics typical of both a “bar” and a restaurant. Places of assembly within a building, structure or portions thereof used “principally as a... restaurant”, are specifically not subject to the sprinkler requirements of s. 26G1/2. In some instances this Board has determined that such establishments that feature such combined bar and restaurant features may not be subject to the sprinkler requirements of s. 26G1/2 if a reasonable separation exists between that portion of the building used or designed as a bar (or room used for entertainment purposes) and the other portion of the building used as a restaurant. In determining if a sprinkler system is required in such “combination” establishments the Board will conduct the following two-part analysis:

1. Is that portion of the building used or designed for bar or entertainment purpose reasonably apportioned and separate from the other areas of the building? In determining this question, there must be a sufficient physical separation that exists between the entertainment or bar portion from the rest of the building which prevents the occupants or activities of the bar to expand into the dining area. Such separation can include a permanent wall or closed door. Additionally, there must be a separation in an operational or business context that exists which assures that the activities that occur in the bar or entertainment area do not overflow or expand into the restaurant or other areas when such areas are no longer in operation.
2. If the separation exists, as described in question #1, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?

This particular establishment features a wide-open area with no physical or operational separation between any bar area and a restaurant portion. The entire function, bar or lounge area can clearly and legally operate in a manner typical of a bar or lounge. It has a full liquor license and it has the ability to remain open until 1:00a.m. It routinely and regularly serves alcoholic beverages, in the form of hard liquor or draft, to paying customers who may order such beverage with or without a meal. It features characteristics typical of a lounge or bar. Additionally, the dimensions of the function/lounge area, (approximately 2,000 s.f.), based upon the current allowable occupancy load of 280 persons, creates the potential for concentrated occupancy. In short, the characteristics of this lounge/function area, as both currently used and designed, are typical of a "bar" with a capacity of over 100 persons.

G) DECISION AND ORDER

Based upon the aforementioned reasoning and the evidence presented at the hearing, the Board **unanimously upholds** the Order of the Charlton Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 and further orders the installation in accordance with statutory timeline:

1. The submission of plans and specifications for the installation of sprinklers by May 15, 2006, and
2. Complete installation within 3 years of the effective date of the act (by November 15, 2007).

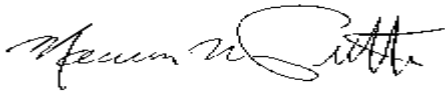
H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Paul Donga	In favor
Stephen D. Coan	In favor
Thomas Coulombe	In favor
Alexander MacLeod	In favor
Peter E. Gibbons	In favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E. Chairman
Chairperson

Dated: April 12, 2006

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY
CERTIFIED MAIL, RETURN RECEIPT TO:** William Plante, Heritage Country
Club, 85 Sampson Road, Charlton, Massachusetts 01507 **and 1st Class Mail, Postage
Pre-paid to:** Chief Ralph W. Harris, Sr., Charlton Fire Department, P.O. Box 114,
Charlton City, Massachusetts 01507.